

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

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| JACK R. STICHTENOTH,  | : | APPEAL NO. C-090646    |
|                       | : | TRIAL NO. DR-0602810   |
| Plaintiff-Appellee,   | : |                        |
| vs.                   | : | <i>JUDGMENT ENTRY.</i> |
| MINDY M. STICHTENOTH, | : |                        |
| Defendant-Appellant.  | : |                        |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Bringing forth two assignments of error, defendant-appellant Mindy Stichtenoth, now known as Mindy Motz, appeals from the final decree of divorce entered by the trial court on September 2, 2009. We affirm.

Motz and plaintiff-appellee Jack Stichtenoth were married on January 24, 1998, and have three children. The parties separated in April 2007 and, at that time, submitted a shared-parenting plan to the court, which was approved by the magistrate assigned to the case. A year later, on April 2, 2008, the parties executed a separation agreement, which incorporated the shared-parenting plan. The separation agreement stated that child support would be determined by the court, and that the support obligation would have an effective start date of April 2, 2008.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Further, the separation agreement contained provisions about selling the marital residence if the mortgage could not be refinanced into Stichtenoth's name and selling the parties' pizza franchise if Motz could not refinance the business debt into her name only and buy out Stichtenoth's interest in the business.

Neither party submitted the separation agreement to the trial court until the final property hearing, which occurred on February 26, 2009.

At the property hearing, the testimony focused on the income of the parties and Motz's failure to provide discovery to Stichtenoth. At the end of the property hearing, the magistrate adopted the separation agreement as its own and ordered Motz to pay \$1701.19 in monthly child support to Stichtenoth. Motz filed objections to the magistrate's decision, which were overruled by the trial court.

In her first assignment of error, Motz contends that the trial court erroneously calculated child support by incorrectly imputing income to her and by failing to deviate from the child-support guidelines in light of the parties' shared-parenting plan.

It is well established that a trial court's decision regarding child support obligations falls within the discretion of the trial court and will not be disturbed absent a showing of an abuse of discretion.<sup>2</sup> An abuse of discretion is more than an error in judgment or law; it implies an attitude on the part of the trial court that is unreasonable, arbitrary, or unconscionable.<sup>3</sup>

Motz is self-employed. She operates and manages the marital business, a pizza franchise. Because Motz consistently refused to provide discovery to Stichtenoth, it was difficult to determine her true income for 2008. On the child-

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<sup>2</sup> *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144, 541 N.E.2d 1028.

<sup>3</sup> *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

support worksheet, Motz's income for 2008 was determined to be \$89,527. In determining this amount, the trial court considered Motz's 2007 income-tax return, the testimony of the accountant for the marital business, the year-end 2007 profit – and-loss statement for the business, and the June 2008 profit-and-loss statement.

After a thorough review of the record, we cannot say that the trial court erred in determining Motz's 2008 income to be \$89,527. Motz's 2007 income-tax return indicated that she had earned \$60,307. The trial court started with that figure and then imputed an additional \$29,200 as income to Motz. That figure was made up of deductions that Motz had taken for expenses associated with her personal cellular phone and her personal automobile, as well as other items. Although Motz argues that these were legitimate business expenses, the record belies that assertion.

Motz argues that the business did poorly in 2008, and thus, her income was not the same in 2008 as it had been in 2007. But the accountant testified that the store was on a "similar pace" for 2008 as it had been in 2007 with respect to profits. The 2007 profit-and-loss statement for the business indicated that, as of June 2007, the store had had gross receipts of \$345,834. The June 2008 profit-and-loss statement showed that the business's gross receipts for the year to date were \$345,074.

The accountant testified that Motz had been erratic since May 2008 in supplying him with financial information for the store, and thus, he was unable to complete a 2008-income tax return prior to the property hearing.

Based on all this information, we cannot say that the trial court abused its discretion in using the income Motz had earned in 2007 to determine her 2008

income for child-support purposes. Using that figure, the child-support obligation came to \$1701.19.

Next, Motz argues that the trial court was required to deviate from the child-support obligation because of the shared-parenting plan. We disagree.

Courts generally use the Ohio Child Support Guidelines in determining the appropriate level of child support. Under R.C. 3119.24, though, a court may deviate from the guidelines if the “amount would be unjust or inappropriate to the children or either parent and would not be in the best interest of the child because of the extraordinary circumstances of the parents or because of any other factors or criteria set forth in section 3119.23 of the Revised Code.” One of the R.C. 3119.23 factors that may be considered to support a deviation is parenting time. But simply because a deviation from the child support guidelines is “permissible, or even desirable,” there is no authority that requires a trial court to deviate from the guidelines.<sup>4</sup>

After reviewing the record, we hold that the trial court did not abuse its discretion by not deviating from the child-support guidelines in light of the parties’ shared-parenting plan. First, Motz never requested a deviation. Second, even if anything in the record could be construed as requesting a deviation from the child-support guidelines, there was no evidence presented to support a finding that the amount calculated for child support under the guidelines had been unjust or inappropriate to the children or either parent, or not in the best interest of the children.

Because the trial court properly calculated the child support obligation, we overrule Motz’s first assignment of error.

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<sup>4</sup> Id. at ¶13, citing *Kosovich v. Kosovich*, 11<sup>th</sup> Dist. No. 2004-L-075, 2005-Ohio-4774.

In her second assignment of error, Motz maintains that the trial court erred by failing to enforce the separation agreement. We are unpersuaded. Motz asked the trial court to enforce the separation agreement, specifically the provisions requiring Stichtenoth to pay the equity loan on the marital residence, to pay his portion of health insurance, and to divide the 2006 income-tax refund. But when Motz filed this motion, the separation agreement had not yet been made an order of the trial court, and thus, was unenforceable as such. Because the separation agreement was not adopted by the trial court until May 2009, it was impossible for the trial court to grant Motz's October 2008 motion to enforce the separation agreement. The trial court could only enforce the separation agreement prospectively from the date it was adopted by the court. The second assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., HILDEBRANDT and MALLORY, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on June 23, 2010

per order of the Court \_\_\_\_\_.  
Presiding Judge